A

TENAGA NASIONAL BHD

v.

CS YAP ENGINEERING SDN BHD

B

COURT OF APPEAL, PUTRAJAYA
ABU SAMAH NORDIN JCA
HISHAMUDIN MOHD YUNUS JCA
AZHAR MA'AH JCA
[CIVIL APPEAL NO: W-02-2283-09]

C

18 JULY 2012

PUBLIC UTILITIES: *Electricity - Charges - Under billing - Issuance of debit note - Appellant's oversight on computing formula - Whether appellant could charge for consumption of electricity between January 1998 to May 2000 - Whether meter faulty or energy consumed was incorrectly registered by meter - Whether proviso to reg. 11(2) Licensee Supply Regulations 1990 applied - Whether onus on appellant to satisfy proviso - Whether debit note ultra vires reg. 11(2)*

D

E

The appellant had issued a debit note dated 30 June 2000 in the sum of RM741,851.11 to the consumer ('respondent') for the supply and consumption of electricity between 13 January 1998 and 19 May 2000. The appellant claimed that it had under billed the respondent for the said period by computing the consumption of electricity based on a multiplying factor of 1.5 instead of ten. The High Court decided in favour of the respondent since the said debit note was *ultra vires* reg. 11(2) of the Licensee Supply Regulations 1990 ('1990 Regulations'). The learned judge arrived at this decision by applying the ordinary principles of statutory interpretation and by looking at the amendment to reg. 11(2) which was made in 2002 by way of PU(A) 489/2002 wherein by this amendment, the appellant was empowered to make retrospective adjustment to the consumer's account when, *inter alia*, (i) there was an incorrect meter reading and (ii) there was an incorrect application of a meter multiplying constant. Thus, it was decided that reg. 11(2) of the 1990 Regulations prior to the 2002 amendment applied in this case. Dissatisfied with the said decision, the appellant appealed to this court and the issue that arose for consideration was whether the appellant's claim based on the debit note was *ultra vires* reg. 11(2) of the 1990 Regulations.

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Held (dismissing appeal with costs)
Per Abu Samah Nordin JCA delivering the judgment of the court:

(1) The proviso to reg. 11(2) of the 1990 Regulations plainly states that the licensee, *ie*, the appellant 'may make a charge for the supply of energy' where the electrical energy supplied as registered by the meter is not equal to the energy consumed or that the meter is not registering the actual consumption due to faulty installation. The onus was on the appellant to satisfy the existence of either the two situations as specified in the proviso, failing which the reading of the respondent's meter shall be *prima facie* evidence of the amount of electrical energy consumed by it. On the facts, the appellant admitted that the under billing was due to its own oversight by applying the formula in computing the amount of electricity consumed. This was a circumstance which was not contemplated by reg. 11(2) of the 1990 Regulations. (para 8)

Bahasa Malaysia *Translation Of Headnotes*

Perayu telah mengeluarkan satu nota debit bertarikh 30 Jun 2000 bagi jumlah RM741,851.11 kepada pengguna ('responden') untuk bekalan dan penggunaan elektrik di antara 13 Januari 1998 dan 19 Mei 2000. Perayu mendakwa bahawa ia telah mengenakan responden bayaran kurang bagi tempoh tersebut dengan menghitung penggunaan elektrik berdasarkan faktor pendaraban 1.5 dan bukannya sepuluh. Mahkamah Tinggi telah memutus bagi pihak responden memandangkan nota debit tersebut adalah *ultra vires* per. 11(2) Peraturan Bekalan Pemegang Lesen 1990 ('Peraturan 1990'). Yang arif hakim mencapai keputusan tersebut dengan memakai prinsip pentafsiran statutori dan dengan melihat pindaan kepada per. 11(2) yang dibuat pada tahun 2002 melalui PU(A) 489/2002 di mana dengan pindaan ini, perayu diberi kuasa untuk membuat pelarasan retrospektif kepada akaun pengguna apabila, antara lain, (i) terdapat kesilapan dalam pembacaan meter; dan (ii) terdapat kesalahan pemakaian pendaraban meter. Oleh itu, diputuskan bahawa per. 11(2) Peraturan 1990 sebelum pindaan tahun 2002 terpakai dalam kes ini. Tidak puas hati dengan keputusan itu, perayu telah merayu ke mahkamah ini dan isu yang dibangkitkan untuk pertimbangan adalah sama ada tuntutan perayu berdasarkan nota debit adalah *ultra vires* per. 11(2) Peraturan 1990.

Diputuskan (menolak rayuan dengan kos)
Oleh Abu Samah Nordin HMR menyampaikan penghakiman mahkamah:

(1) Proviso kepada per. 11(2) Peraturan 1990 menyatakan bahawa pemegang lesen, iaitu perayu, boleh mengenakan bayaran bagi bekalan tenaga di mana tenaga elektrik yang dibekalkan seperti yang dicatatkan pada meter adalah tidak sama dengan tenaga yang digunakan atau pun apabila meter tidak mencatatkan penggunaan sebenar akibat salah pemasangan. Beban adalah atas perayu untuk membuktikan kewujudan mana-mana dua keadaan seperti dinyatakan dalam proviso, di mana jika gagal, pembacaan meter menjadi bukti *prima facie* bagi jumlah tenaga elektrik yang digunakan. Berdasarkan fakta, perayu telah mengaku bahawa pengenaan bayaran kurang adalah disebabkan oleh kesilapannya memakai formula dalam mengira jumlah penggunaan elektrik. Ini adalah suatu keadaan yang tidak dipertimbangkan di bawah per. 11(2) Peraturan 1990.

Case(s) referred to:
Claybricks & Tiles Sdn Bhd lwn. Tenaga Nasional Bhd [2006] 4 CLJ 892 CA ***(dist)***
Public Textiles Bhd v. Lembaga Letrik Negara [1976] 1 LNS 120 FC ***(dist)***
Tenaga Nasional Bhd v. Teck See Plastic Sdn Bhd [2007] 9 CLJ 161 HC ***(dist)***

Legislation referred to:
Licensee Supply Regulations 1990, reg. 11(2)

For the appellant - Abdullah Omar; M/s Hisham, Sobri & Kadir
For the respondent - Neela Iaduray; M/s Neela

[Appeal from High Court, Kuala Lumpur; Suit No: D6-22-1192-2005]

Reported by Baizura Abd Razak

JUDGMENT

Abu Samah Nordin JCA:

[1] The dispute between Tenaga Nasional Bhd ('the appellant') and the respondent ('the consumer') is over a claim based on a debit note No. 423803 dated 30 June 2000 in the sum of RM741,851.11 issued by the appellant to the consumer for the supply and consumption of electricity for the period between

13 January 1998 and 19 May 2000. The appellant claimed that it had under billed the consumer for the supply and consumption of electricity for the said period. The consumer denied liability.

[2] The appellant had admitted that the debit note was issued due to its own oversight in applying the formula in computing the quantity of electricity consumed. It is the appellant's case that it had computed the quantity of electricity consumed by the consumer based on a multiplying factor of 1.5 instead of a multiplying factor of ten, which resulted in the under billing of the electricity consumed.

[3] The only issue in this appeal is whether the appellant's claim based on the debit note is *ultra vires* reg. 11(2) of the Licensee Supply Regulations 1990 ('1990 Regulations') and thus null and void. This is essentially a matter of construction of reg. 11(2) of the 1990 Regulations.

[4] The 1990 Regulations came into force on 15 November 1990. The debit note is dated 30 June 2000. The under billing is in respect of electricity consumed for the period between 13 January 1998 and 19 May 2000.

[5] Regulation 11(2) of the 1990 Regulations states:

> (2) The reading of the consumer's meter shall be *prima facie* evidence of the amount of electrical energy consumed, provided that should the supply registered by the meter at any time is not equal to the energy consumed or the meter is not registering the actual consumption due to faulty installation, the licensee may make a charge for the supply of energy.

[6] There is no evidence that the meter was faulty or that the energy consumed was incorrectly registered by the said meter. Learned counsel for the consumer contended that there were only two circumstances under which the appellant could issue the debit note, namely:

(a) when the meter failed to accurately register the amount of energy supplied to the consumer; or

(b) the meter did not accurately record the consumption of electricity due to faulty installation.

[7] The learned judge agreed with the above contention of learned counsel for the consumer and accordingly held that the debit note was *ultra vires* reg. 11(2) of the 1990 Regulations. The

learned judge arrived at this decision by applying the ordinary principles of statutory interpretation and by looking at the amendment to reg. 11(2) which was made in 2002 by way of PU(A) 489/2002. By this amendment the appellant is empowered to make retrospective adjustment to the consumer's account in respect of electricity consumption in the following circumstances:

(a) meter inaccuracy;

(b) malfunctioning of the meter or its associated installation or part thereof;

(c) incorrect meter reading;

(d) incorrect application of a meter multiplying constant;

(e) cross-connection to different account; or

(f) faulty installation.

Thus, under reg. 11(2) of the 1990 Regulations, prior to the 2002 amendment, the appellant's power to make a charge for the supply of electricity was limited only to the two circumstances referred to in para. (6) above.

[8] We agree with the learned judge on the construction of reg. 11(2) of the 1990 Regulations. The proviso to reg. 11(2) of the 1990 Regulations plainly states that the licensee ie, the appellant 'may make a charge for the supply of energy' where the electrical energy supplied as registered by the meter is not equal to the energy consumed or that the meter is not registering the actual consumption due to faulty installation. The onus is on the appellant to satisfy the existence either of the two situations as specified in the proviso, failing which the reading of the consumer's meter shall be *prima facie* evidence of the amount of electrical energy consumed by the consumer. The appellant had admitted that the under billing was due to its own oversight in applying the formula in computing the amount of electricity consumed, a circumstance which was not contemplated by reg. 11(2) of the 1990 Regulations.

[9] The cases referred to by the appellant are clearly distinguishable. In *Claybricks & Tiles Sdn Bhd lwn. Tenaga Nasional Bhd* [2006] 4 CLJ 892, the meter had been tampered with. In *Public Textiles Bhd v. Lembaga Letrik Negara* [1976] 1 LNS 120, the claim for under billing was made under the Electricity Act 1949

(Revised 1973) and the Electricity (Board Supplies) Rules 1949. The consumer relied on the doctrine of estoppel as a defence. The court held that the plea of estoppel could not be pleaded against a public corporation entrusted with a statutory duty. In the instant appeal the sole issue revolves on the construction of reg. 11(2) of the 1990 Regulations. In *Tenaga Nasional Bhd v. Teck See Plastic Sdn Bhd* [2007] 9 CLJ 161, the claim was based on a faulty meter which caused the meter to record lesser units of electricity consumed. In the instant appeal there is no evidence that the meter had failed to accurately register the amount of energy supplied and consumed or that the meter had not accurately recorded the consumption of electricity due to faulty installation.

[10] In the result, we dismissed the appeal with costs.